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AGREEMENT  
BETWEEN  
THE STATE OF ARIZONA  
AND  
THE BELMONT CORPORATION

THIS AGREEMENT is entered into February 9, 1993, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the BELMONT CORPORATION, and Arizona Corporation, acting by and through its BOARD OF DIRECTORS (the "Corporation").

I RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 to enter into this agreement and the authority to execute this agreement on behalf of the State has been delegated to the undersigned.

2. The Corporation is empowered to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Corporation. A copy of that authority and authorization are attached hereto as Exhibits A and B.

3. The Corporation is developing a phased master planned community located North of Interstate I-10 between the Hassayampa River and 371st Avenue. The approved plan is designed with its primary access at 347th Avenue on I-10. The Federal Highway Administration has approved the change of access report (which is attached hereto as Exhibit C), with the condition that the interchange not be built before all applicable federal requirements have been satisfied, until the 339th Avenue interchange reaches capacity, or at the beginning of development of Phase 2 of the Belmont Master Plan (currently scheduled for the year 2000). A copy of the currently approved Master Plan phasing schedule with the designated phases is attached hereto as Exhibit D. Both parties to this agreement understand that the phasing schedule attached as Exhibit D may from time to time be changed by the Maricopa County Board of Supervisors. It is agreed that before any change in definition or boundaries of Phase One referred to in this agreement are made, must be approved and accepted by the local district office of FHWA before such definition or boundaries may be changed in this agreement. During design, anticipated travel volumes shall be reviewed to determine if auxiliary lanes between the 339th Avenue and proposed 347th interchanges are required to be built pursuant to the FHWA approval, before the interchange at the 347th Avenue is constructed. If necessary, these auxiliary lanes shall be included as part of the design and construction of the interchange. Therefore, the Belmont Corporation desires to provide design and fund all costs associated with the future design, review, bidding and construction of a full diamond I-10 - 347th

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Avenue traffic interchange and auxiliary lanes, if needed, and required appurtenants, all at Corporation expense. Nothing herein shall be construed to impose an obligation on the State to construct any further interchanges in the immediate area. The construction of the traffic interchange described in this paragraph shall hereinafter be referred to as the Project.

4. This agreement is based on representations made as to the Corporation's willingness to pay all costs of whatever nature related to the design and construction of the 347th Avenue interchange, and on the assumption that the State will not incur or bear any cost of whatever nature related to the design or construction of the Project. The Corporation has informed the State that it has the ability and will have the ability to procure, borrow, or otherwise arrange for the funds necessary to build the Project.

THEREFORE, in consideration of the mutual agreements expressed herein it is agreed as follows:

## II. SCOPE OF WORK

1. The Corporation will:

a. Provide to State standards all design studies, plans, specifications, reports, environmental clearances, right-of-way plans, cost estimates and such other documents and services necessary for construction bidding and construction of the proposed interchange and other required highway features. Incorporate State review comments in the design and construction of the Project.

b. Transfer free and clear title to the State, for all right-of-way needed for the interchange, including any needed for additional travel lanes of the freeway that may be required, 12 months prior to advertisements for construction bids.

c. Be responsible for all costs of the State, including but not limited to costs of review, bidding, planning, public hearings, construction administration and management, cost of construction, claims, change orders, delays, extras, hazardous material testing and cleanup, litigation and/or arbitration expenses, accounting, right-of-way, insurance and losses during construction.

d. Prior to the State incurring any costs or expenses, or performing any activities relating to the Project, deposit with the State cash or other medium of exchange acceptable to the State in its sole and absolute discretion an amount sufficient to pay 120% of all the State's costs and expenses, as estimated by the State, relating to the design, review, planning, right-of-way

verification and administration and management of the design phase of the Project.

e. Prior to the State submitting the project for construction bidding, deposit with the State an additional amount in cash or medium of exchange acceptable to the State in its sole and absolute discretion 120% of the amount estimated by the State to complete the construction of the Project. Be responsible for all costs related to construction, change orders, delays or claims for extra compensation made by the contractor during construction. The Corporation will deposit with the State in a medium of exchange acceptable to the State (cash or bond issued by a company authorized to sell surety insurance and do business in the State) an amount such that the total amount on deposit will always equal one hundred twenty percent (120%) of the then estimated remaining costs of construction. Additional deposits will be made as necessary so that at all times the unused deposit will equal or exceed one hundred twenty percent (120%) of the estimated remaining cost; such estimates to be made by the State.

f. Prior to award of any contract for construction, but after receipt of bids, deposit any additional sums necessary to cover the excess of 120% of the bid accepted for award over the sum deposited pursuant to paragraph (e) above.

g. Retain the right to decline award for construction if bids are twenty percent (20%) higher than the pre-bid estimate for construction, and be responsible for all costs associated with re-bidding the Project for construction or canceling the contract.

h. Deposit any additional sums reasonably necessary to cover its obligations as the need arises, such additional sums to be paid within thirty (30) days of invoicing.

2. The State will:

a. Perform design reviews of the design, environmental and right-of-way documents at the thirty (30%), sixty (60%) and ninety five (95%) percent levels of completion and provide comments.

b. Advertise and hold public hearings if necessary. At the written request of the Corporation upon completion of design, and in compliance with State, FHWA and local government requirements, call for bids and award one or more construction contracts for the Project. Administer same and make all payments to the contractor(s). Obtain the concurrence of the Corporation on any contractor contract modifications change orders or extras.

c. Invoice the Corporation before any costs or expenses are incurred in an amount estimated to cover its costs and

expenses, and thereafter as the need arises, invoice the Corporation for additional sums to cover reasonable anticipated costs and expenses not previously covered; prior to bid advertisement, invoice the Corporation for the entire amount estimated to cover all costs of construction, construction administration, and post-award construction engineering, plus an additional amount of twenty percent (20%) of the then estimated construction cost to cover construction change orders, delays or claims for extra compensation made by the contractor; invoice the Corporation for any difference of one hundred twenty percent (120%) of the bid amount over the pre-bid estimate for construction prior to the actual award of the construction contract. All monies due from the Corporation shall be paid in full within 25 days after receipt of the invoice amount. The Corporation shall have a grace period of 10 days after receipt of written notice to cure any default. In the event the actual construction bid is less than the pre-bid figure plus 20%, the amount of such difference plus interest (as defined in paragraph II, 2, h) shall be refunded to the Corporation once the construction contract is awarded.

d. Invoice the Corporation periodically so that the unused deposit will at all times equal one hundred twenty percent (120%) of the estimated remaining cost, as estimated by the State, and release to the Corporation all funds or bond amounts in excess of the 120% amount.

e. Upon completion, approve and accept the Project on behalf of the parties hereto and provide maintenance within the State's right-of-way.

f. Use its powers of eminent domain, if necessary, to acquire any additional property needed to complete the auxiliary lanes as referred to in Section I paragraph 3. The Corporation shall deposit with the State sufficient cash or cash equivalent to fund 120% of any and all costs and expenses of such eminent domain action, including attorneys fees. In the event the attorneys fees are incurred by the use of the Attorney General's Office, the standard and customary rates used by the Attorney General's Office will be used to determine the fees due pursuant to this clause. In the alternative, if the Attorney General's Office is not used to pursue the Eminent Domain action and outside counsel is retained, the Corporation shall have the right to consult with the Attorney General in the selection of the outside counsel and further, the Corporation will be given the opportunity to consult as to whether the condemnation case, if filed, will be settled, go to trial, or settled during trial. However, the final decision as to the selection of outside counsel and whether to file the case, to settle, go to trial or settle during trial shall be made by the State.

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g. Promptly repay the Corporation any monies, plus attributable interest as defined in paragraph II, 2, h which remain after payment of all construction costs after the completion of the Project.

h. All undisbursed funds deposited with the State by the Corporation pursuant to the terms and conditions of this agreement shall be deposited in an interest bearing account at a location and on terms mutually acceptable to both the State and the Corporation. All interest earned from such interest bearing account shall be paid to the Corporation at such times and in such amounts as are agreed to between the parties and the depository entity. While it is expressly agreed that all such interest shall belong to the Corporation, the State shall have the flexibility to draw down such funds from the account as it deems necessary and prudent to meet the obligations and the disbursal requirements set forth herein. The deposit of the money referenced to herein shall comply with all of the requirements of the State Treasurer which are usual and customary for such accounts.

i. At such time as the Corporation begins design work on the interchange, recommend to the ADOT Transportation Board that the Project be designated to be included in the current "Arizona Department of Transportation Five-Year Transportation Facilities Construction Program."

### III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of said Project and payments; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be canceled if any of the payments called for are not made within twenty-five (25) days plus the cure period specified in this agreement, or if any of the other conditions of the agreement are not met.

2. This agreement shall become effective upon execution by the parties hereto.

3. Belmont shall have the right to assign this Agreement to any joint venture, assignee, purchaser, or any other entity subject to the prior approval of the State, which approval shall not be unreasonably withheld. However, the State may require that the successor provide adequate proof of its ability to comply with the terms and conditions of the contract before giving its approval. If the State approves the assignment, Belmont shall be relieved of all obligations herein.

4. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

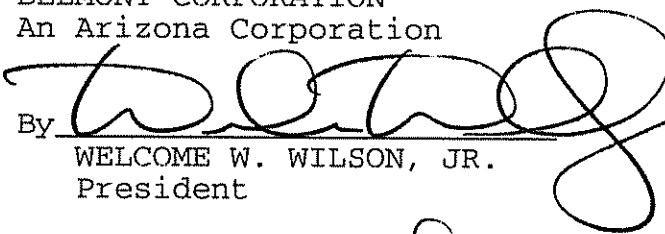
Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Room 222E Mail Drop 616E  
Phoenix, AZ 85007

Belmont Corporation  
c/o Paul E. Gilbert  
Beus, Gilbert & Morrill  
3200 North Central Avenue Suite 1000  
Phoenix, AZ 85012-2417

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

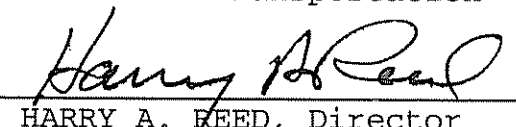
BELMONT CORPORATION  
An Arizona Corporation

By

  
WELCOME W. WILSON, JR.  
President

STATE OF ARIZONA  
Department of Transportation

By

  
HARRY A. REED, Director  
Transportation Planning  
Division

ATTEST

By

  
TIMOTHY J. HOOK  
Vice President

BELMONT CORPORATION

Certificate of Incumbency and Authority

February 9, 1993

The undersigned, in his capacity as Assistant Secretary of Belmont Corporation, an Arizona corporation, hereby certifies as follows:

1. The current elected officers of this corporation include the following:

Welcome W. Wilson, Jr. - President

Timothy J. Hook - Vice President

Robert C. Bates - Assistant Secretary

2. The Bylaws of this corporation currently in force authorize the President or any Vice President of the corporation "to sign on behalf of the corporation any deed, bill of sale, assignment, option, mortgage, pledge, note, bond, evidence of indebtedness, application, consent (to service of process or otherwise), agreement, indenture or other instrument of any significant importance to the corporation", as set forth in the excerpted copy attached hereto of Section 6.02 of the Bylaws of this corporation.

DATED this 9<sup>th</sup> day of February, 1993.

By: Robert C. Bates  
Robert C. Bates  
Assistant Secretary

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EXHIBIT A

6.02. President and Vice Presidents. Unless otherwise specified by resolution of the Board of Directors, the President shall be the chief executive officer of the corporation. The President shall supervise the business and affairs of the corporation and the performance by all of its other officers and agents of their respective duties, subject to the control of the Board of Directors (and of its Chairman, if the Chairman has been specifically designated as the chief executive officer of the corporation). One (1) or more Vice Presidents shall be elected by the Board of Directors to perform such duties as may be designated by the Board or be assigned or delegated to them by the chief executive officer. Any one of the Vice Presidents as authorized by the Board will be vested with all of the powers and charged with all of the duties and responsibilities of the President in the event of his or her absence or inability to act. Except as may otherwise be specifically provided in a Board resolution, the President or any Vice President shall be a proper officer to sign on behalf of the corporation any deed, bill of sale, assignment, option, mortgage, pledge, note, bond, evidence of indebtedness, application, consent (to service of process or otherwise), agreement, indenture or other instrument of any significant importance to the corporation. The President or any Vice President may represent the corporation at any meeting of the shareholders of any other corporation in which this corporation then holds shares, and may vote this corporation's shares of such other corporation in person or by proxy appointed by him or her, provided that the Board of Directors may from time to time confer the foregoing authority upon any other person or persons.



June 30, 1992

HA-AZ  
IR-10-2( )  
I-10 Access at 347th Avenue

Mr. Charles E. Cowan  
Director, Arizona Department  
of Transportation  
Phoenix, Arizona 85007

Dear Mr. Cowan:

Reference is made to your March 31, 1992 letter in which you request approval for change of access on Interstate 10 at 347th Avenue. The Change-of-Access Report, submitted by the Belmont Development Corporation, proposes a Diamond Interchange to serve a 20,805 acre master-planned community. The Design Development, Right of Way, and Construction of the interchange would be 100% privately funded.

The additional access points necessary for construction of this interchange are approved subject to compliance with applicable Federal requirements. This approval is given with the further condition that the interchange will not be built until such time as the 339th Avenue interchange reaches capacity or at the commencement of development of Phase 2 of the Belmont Master Plan (currently scheduled for the year 2000). Anticipated travel volumes should be reviewed again at the time of actual design to determine if auxiliary lanes between the interchanges at 347th Avenue and 339th Avenue are necessary.

Sincerely yours,

**E. A. WUESTE**

E. A. Wueste  
Division Administrator

cc: ✓ Paul E. Gilbert-Bues, Gilbert & Morrill

RECEIVED JUL - 1 1992

EXHIBIT C